



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801

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Preston Bryant
Secretary of Natural Resources

David K. Paylor
Director

R. Bradley Chewning, P.E.
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

National Fruit Product Company, Inc.
Registration #: 80045

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and National Fruit Product Company, Inc., for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. “Order” means this document, also known as a Consent Order, and incorporates the additional terms and conditions as set out in Appendix A to this document.
6. “National Fruit” means National Fruit Product Company, Inc., a company authorized to conduct business in the Commonwealth of Virginia.
7. “Facility” means National Fruit’s food processing facility located at 550 Fairmont Avenue, Winchester, Virginia.
8. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
9. “CFR” means Code of Federal Regulations.

SECTION C: Findings of Facts and Conclusions of Law

1. On January 31, 2005, a DEQ inspector visited the National Fruit facility. The inspection report documented that National Fruit had ordered a boiler for immediate replacement and that the DEQ inspector directed the facility contact to “contact Air permitting ASAP about the replacement of the boiler.” The inspection report also documented other deficiencies for which a Warning Letter was issued on February 16, 2005. A copy of the inspection report, marked Out of Compliance, was issued to National Fruit on February 25, 2005.
2. In a letter dated August 30, 2005, National Fruit notified DEQ that the aforementioned boiler replacement was completed on August 25, 2005. A complete permit application had not yet been submitted by National Fruit by this date.
3. DEQ received a deficient permit application for the boiler replacement on June 22, 2005. A DEQ permit writer sent an application deficiency letter to National Fruit on June 29, 2005, with an information submittal deadline of July 13, 2005. Follow-up phone calls to National Fruit were made on July 21 and 28 to inquire about the status of the requested information. A National Fruit representative returned a call to DEQ on August 15, 2005 and submitted the requested information on August 17, 2005. National Fruit responded to additional requests for information on August 29, September 16, and October 4.
4. DEQ issued a Notice of Violation (NOV) to National Fruit on October 12, 2005 for an apparent violation of State Air Pollution Control Law and regulations occurring at National Fruit’s facility located in Winchester, Virginia where National Fruit installed and placed into operation a Superior Boiler Works boiler as a replacement for the No. 3 Johnston Boiler without first obtaining a permit. This is in apparent violation of Condition 1 of National Fruit’s Commonwealth of Virginia Operating Permit dated April 9, 2004, as well as violations of 9 VAC 5-50-390, 9 VAC 5-80-830, and 9 VAC 5-80-1210 D.

5. 9 VAC 5-50-390 provides:

A permit may be required prior to beginning any of the activities specified below if the provisions of this chapter and 9 VAC 5 Chapter 80 ... apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply. ... 3. Modification (any physical change to equipment) of a facility.

6. 9 VAC 5-80-830 provides:

For permits issued under the provisions of 9 VAC 5-80-800 C 1, a single complete application is required identifying each emissions unit to be covered by the permit. The application shall be submitted according to procedures approved by the board. Where several units are included in one stationary source, a single complete application shall be submitted covering all units which are to be permitted in the stationary source. A separate complete application is required for each stationary source.

7. 9 VAC 5-80-1210 D provides:

Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section.

8. DEQ permitting, compliance, and enforcement officials met with National Fruit representatives on November 9, 2005 to discuss the matter and agreed in principle to corrective actions. National Fruit has completed an application for securing the proper permit for the boiler replacement. Upon issuance of the permit, no additional corrective action is deemed necessary, whereas the facility is operating within it permitted limits and the operation of the newly replaced boiler does not create any unpermitted discharge of pollutants.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders National Fruit, and National Fruit voluntarily agrees:

1. To pay a civil charge of **\$6,050.00** within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include National Fruit's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to **"Treasurer of the Commonwealth of Virginia"** and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of National Fruit, for good cause shown by National Fruit, or on its own motion after notice to National Fruit and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, National Fruit admits to the allegations in Section C of this Order.
4. National Fruit consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. National Fruit declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of National Fruit to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by National Fruit to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. National Fruit shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. National Fruit shall show that such circumstances were beyond its control and not due to a lack of good faith or

diligence on its part. National Fruit shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

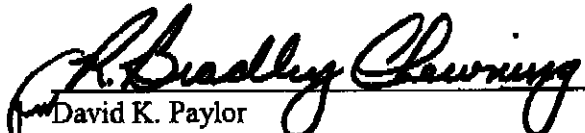
Failure to so notify the Regional Director within 24 hours of learning of any condition above, which National Fruit intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and National Fruit. Notwithstanding the foregoing, National Fruit agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. National Fruit petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to National Fruit.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve National Fruit from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. By appropriate signature below, National Fruit voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 16 March, 2006.


David K. Paylor
Department of Environmental Quality

National Fruit voluntarily agrees to the issuance of this Order

By:  David C. Gurn, Jr. *v.p. & m.f.*

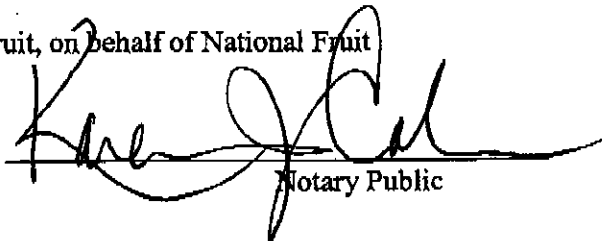
Date: 3-13-06

Commonwealth of Virginia

City/County of Winchester

The foregoing document was signed and acknowledged before me this 13th day of March, 2006, by David C Gurn, Jr, who is
(name)

VP of Manufacturing of National Fruit, on behalf of National Fruit
(title)


Notary Public

My commission expires: 12-31-08